

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF:

D. P.

v.

NO. 03-17

CUMBERLAND COUNTY SCHOOL SYSTEM

FINAL ORDER

Marilyn L. Hudson
Administrative Law Judge
603 Main Street, Suite 600
Knoxville, Tennessee 37902
(865) 525-7115

September 4, 2003

FINAL ORDER

Case No. 03-17

The mother of the student timely requested a due process hearing to determine whether or not the Cumberland County School System ("school") should be required to provide a "one-on-one teaching assistant" for the student in order to comply with the requirements of providing a free appropriate public education. On or about April 15, 2003, the Tennessee Department of Education, Division of Special Education appointed the undersigned Administrative Law Judge to hear this case. On April 16, 2003, the undersigned issued an Order for Hearing, which included a pre-hearing telephone conference. The parent requested additional time, specifically waiving the 45-day rule. For good cause shown, the undersigned granted the parent's request. This case was heard July 14, 2003, at the Cumberland County School System Board Room - Stadium Complex, in Crossville, Tennessee.

EVIDENCE PRESENTED

At the time of the hearing, the student was six (6) years old. He has been diagnosed as having significant developmental delays, seizure disorder, cerebral palsy and ADHD. He cannot talk, is considered very hyper and aggressive. He hits, screams

and has little-to-no attention span. He has been taking numerous medications over the past school year, including imipramine, ethosuximide, Lamictal and Ritalin.

The student was evaluated in March 2003 by Vanessa Elliott, Ph.D., Clinical Psychologist at Vanderbilt Children's Hospital. This was an independent evaluation at the mother's request. Dr. Elliott prepared a written evaluation that included the following:

"The school might also consider obtaining an individual aide to work with [the student] given his complex medical history, behavioral difficulties, and impulsivity which has resulted in multiple accidents and injuries."

Dr. Elliott did not appear at the hearing.

The mother testified that the student had been injured at school. She described one instance where his head was injured, requiring stitches to close the wound. She also described observing him returning from school on several occasions with bruises and on one occasion with blood on his shirt. The mother also testified that the school's teachers frequently remarked to her that the student hits and bites other students and runs around the classroom when he should be seated. She had personally observed him in class "constantly up, down, smacking, pulling hair, biting."

The mother testified that she did not want the student removed from the classroom for a one-on-one instructional

relationship but that she wanted an aide assigned to him, working "one-on-one with him, like hand over hand."

Rita Walker, the student's classroom teacher for the past two (2) years, testified that the student's aggressive behaviors have escalated over the past school year. She said he hit, kicked, bit and pulled the hair of fellow students. She had the student strapped in a chair to control him. This practice ceased when the mother objected.

Ms. Walker has three (3) aides assigned to her class. During the past school year the number of students in her class ranged from 14 to 17. She stated that no particular aide is designated to serve as the student's aide throughout the day but that at all times during the day when the student is in her classroom either she or one of the aides is working one-on-one with the student. When the student is in a group setting the aides do not always sit beside the student but are near. If the student misbehaves, an aide intercedes and removes him. The student leaves Ms. Walker's classroom for additional services and for each service provided he is "one-on-one" with the service provider, whether it be for occupational therapy, physical therapy or speech and language sessions.

Samantha Isbell is another kindergarten teacher at Stone, the elementary school attended by the student. She has observed the student at recess, both in the gym and on the playground, and also in the cafeteria. She described instances when the student

wandered to other tables in the cafeteria. She also described instances when she observed the student push other students and pull their hair. She said that in these circumstances she had always seen someone in close proximity to him. This person would intercede to stop the inappropriate behavior.

The student attended the hearing for approximately three hours where the undersigned observed him to frequently require restraint to prevent him from moving around the room. He did not exhibit any attempts to inflict injury upon anyone in the room and was quickly calmed by his mother or grandfather stroking him or speaking softly to him.

The mother disagreed that a teacher or aide was "one-on-one" at all times and pointed to the number of instances where the student was hurt or inflicted hurt on others or simply walked away from the task at hand. She believes the circumstances require that one particular person be assigned to be with the student at all times.

The school witnesses conceded that the student has in fact been able to hurt other students and has also hurt himself at school, but stated that some group interaction was necessary for the student's development; that the procedures followed were the least restrictive alternative; and that an aide or teacher is in close proximity to the student at all times. When instruction on a particular task is taking place Ms. Walker stated that she or an aide is sitting with the student.

ISSUE PRESENTED

Is the school required to provide an aide assigned solely to the student?

DISCUSSION

The parties do not do not dispute that the student requires close supervision. The only dispute is the implementation of that supervision.

The mother has observed instances where the student was not timely restrained such that the student was able to hit, bite, or pull the hair of fellow students. She has also observed instances where the student has walked away from an instructional setting. The school admits these incidents have occurred and concedes that the student's aggressive behavior has escalated over the past year.

The school argues that a teacher or an aide is always in close proximity and to provide any closer supervision would prevent the student from learning to function within a group setting.

The mother testified that she had advised Dr. Elliott that there was a teacher and three aides in the student's classroom. Dr. Elliott's report recommended that the school consider obtaining an individual aide to work with the student, but she did not specify what the aide would do.

From all of the testimony, it appears that there are ample adults available to deliver the level of supervision necessary to prevent the student from inflicting harm to others and from sustaining harm to himself and to keep him on task of the instruction presented. The problem is the delivery of the supervision. The student should be supervised so that he is safe, others around him are safe, and he is kept "on task" so as to benefit from the instruction given.

ORDER

For the foregoing reasons, it is ORDERED that the parent's request for an aide assigned specifically to the student while he is in the classroom, including during group activities, be and hereby is granted; and it is

FURTHER ORDERED that the assignment of the specific aide may vary from activity to activity throughout the day so long as at all times while the student is in the classroom, an aide is assigned specific responsibility for the student unless the teacher is working directly with the student; and it is

FURTHER ORDERED that the assignment of an aide does not include sessions for occupational therapy, physical therapy or speech and language, but does include those periods of time when the student travels to and from those sessions, as well as when the student is in the cafeteria, gym or playground; and it is

FURTHER ORDERED that the aide so assigned shall be positioned in close enough proximity to the student to intercede before the student is able to inflict harm or sustain harm and to immediately intercede to keep the student on task for the instruction presented; and it is

FURTHER ORDERED that the school is authorized to provide the aide from the aides presently assigned to the student's class.

ENTER this _____ day of September, 2003.

MARILYN L. HUDSON
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Final Order has been served upon the following as set out below on this _____ day of September, 2003:

Mother of D.P.
Crossville, TN 38555
Via regular U.S. Mail

Earl Patton, Esq.
Attorney for School
300 Thurman Ave.
Crossville, TN 38555
Via regular U.S. Mail and facsimile transmission

Bill Ward, Due Process Coordinator
Division of Special Education
Tennessee State Department of Education
5th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243-0380
Via regular U.S. Mail

MARILYN L. HUDSON